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No. 87-1252

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

H.J., INC., a Minnesota Corporation, KIRK DAHL, LARRY KRUGEN, and MARY KRUGEN, individually and d/b/a PHOTO IMAGES, SUSAN DAVIS, ROBERT NEAL, ISAAC H. WARD, RICHARD L. ANDERSON, THOMAS J. MOTT, and all others similarly situated,

Petitioners,

v.

NORTHWESTERN BELL TELEPHONE COMPANY, a subsidiary of U.S. WEST, A.B.C. individually and D.E.F. as corporations, and other unnamed co-conspirators,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF AMICUS CURIAE THE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF RESPONDENTS

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BRIEF OF AMICUS CURIAE THE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF RESPONDENTS

INTERESTS OF AMICUS CURIAE

The Washington Legal Foundation (WLF) is a non-profit, public interest law and policy center based in Washington, D.C. with 120,000 members nationwide.

WLF is committed to advancing the free enterprise system and to promoting the principles of judicial restraint. To this end, WLF has appeared as *amicus curiae* before this Court as well as other state and federal courts in cases affecting business. *See, e.g.*: *Tull v. United States*, 107 S.Ct. 1831 (1987); *Pacific Gas & Electric Company v. the Public Utilities Commission of California*, 106 S.Ct. 903 (1986); *Consolidated Edison Company of New York v. Public Service Commission of New York*, 100 S.Ct. 2326 (1980); and *Parklane Hosiery Company, Inc. v. Shore*, 99 S.Ct. 645 (1979). WLF has also had substantial experience litigating cases that present significant issues of statutory interpretation. *See, e.g., Patel v. Quality Inn South*, —— F.2d —— (11th Cir., June 8, 1988) (No. 87-7411) and *John A. Bersani, et al. v. U.S. Environmental Protection Agency, et al.*, —— F.2d —— (2d Cir., June 9, 1988) (Nos. 87-6275 and 87-6295).

WLF believes that this case would not have been filed at all, but for the fact that the Racketeer Influenced Corrupt Organizations Act of 1970 (RICO), which was intended to serve as a weapon against organized crime, has come to be used primarily—and inappropriately—as a weapon against legitimate businesses. Thus, WLF intends to argue that, in interpreting RICO's "pattern of racketeering" requirement, which is at issue here, this Court should confine the application of RICO to true racketeering, *i.e.*, to the types of situations that prompted Congress to enact RICO in the first place. WLF's experience with and understanding of the issues involved will provide this Court with a helpful, additional perspective for deciding this case.

WLF submits this brief on behalf of respondents with the written consent of both parties.

STATEMENT OF THE CASE

In the interests of judicial economy, *amicus* adopts by reference the statement of the case set forth by respondents.

SUMMARY OF ARGUMENT

Although this case presents the Court with an opportunity to examine the "pattern of racketeering" requirement of the Racketeer Influenced Corrupt Organizations Act (RICO) (18 U.S.C. §§ 1961-1968), no such examination will ultimately prove fruitful unless it is conducted in the context of RICO's anti-organized crime purposes. It is precisely because RICO's private enforcement provision [18 U.S.C. § 1964(c)] has become unmoored from this context that the instant case is before this Court at all.

The vast majority of private civil RICO suits are filed not against organized crime defendants, but against legitimate businessmen with whom the plaintiffs are having essentially commercial disputes. Consequently, despite Congress' indisputable intention that RICO serve as a weapon against organized crime, legitimate businessmen are being branded as "racketeers"; furthermore, the lower courts are straining—with contradictory and irreconcilable results—to interpret the pattern requirement in such a manner as to avoid this situation without gutting RICO's effectiveness against its intended targets.

No amount of tinkering with the pattern requirement is going to solve the problem. What is needed is a restatement by this Court of the reasons Congress enacted RICO in the first place. Respondents are entitled to have this Court give effect to Congress' intent that private civil RICO suits be limited to organized crime defendants.

ARGUMENT

THE DECISION BELOW SHOULD BE AFFIRMED UNDER ANY INTERPRETATION OF RICO'S "PATTERN OF RACKETEERING" REQUIREMENT.

In the instant case, this Court has agreed to examine the scope of 18 U.S.C. § 1961(5), which describes but does not precisely define "pattern of racketeering activity" under the Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO) (18 U.S.C. §§ 1961-1968).[1] This provision has, of course, been the subject of intense debate as the lower courts struggle to construe it in such a way as to reach the organized criminal conduct that RICO was indisputably intended to attack, without simultaneously reaching the conduct of legitimate businesses—conduct that arguably falls within the letter, though certainly not the spirit, of the law.

As a result of this judicial balancing act, the pattern requirement has degenerated into a mishmash of contrived distinctions among "episodes," "schemes," and "transactions," distinctions that are nowhere mentioned in the statute itself and that admit of neither principled nor consistent application. The instant case presents this Court with an opportunity to unravel these tangled threads of statutory interpretation, and thereby lend a degree of settledness and predictability to what has become an increasingly chaotic area of the law.

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[1] In essence, RICO prohibits a person from investing in, acquiring, or conducting an enterprise through a pattern of racketeering activity (18 U.S.C. § 1962). A "pattern of racketeering activity" is defined in terms of what is required to prove it, *i.e.*, it "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [enacted October 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity" [18 U.S.C. § 1961(5)]. "Racketeering activity" is defined in 18 U.S.C. § 1961(1).

Amicus will not be arguing for or against a particular Circuit's interpretation of the pattern requirement, nor will it be proposing its own interpretation of that requirement. Rather, *amicus* will show that *no* interpretation of the pattern requirement that might be adopted or devised by this Court will be a workable one unless RICO as a whole is construed in accordance with Congress' purpose in enacting it, *i.e.*, as a weapon against organized crime, not against legitimate businesses.

Had RICO been so construed when petitioners filed this suit, the case would have been dismissed not for failure to meet the pattern requirement, but on the grounds that it simply did not involve "organized crime" in the sense that Congress understood that term, and thus did not present the type of problem that RICO was designed to address. Absent such a construction of RICO now, the lower courts—regardless of this Court's interpretation of the pattern requirement—can be expected to continue their contradictory and makeshift efforts to keep the conduct of legitimate businesses from being improperly swept under the RICO umbrella.

A. Private Civil RICO [18 U.S.C. § 1964(c)] Was Not Intended To Apply To Legitimate Businesses And Businessmen Such As Respondents, Against Whom There Is No Allegation Of Involvement In Organized Crime.

The instant case involves a corporation's suit against a telephone company over the latter's alleged bribery of members of a state public utilities commission in order to obtain a rate increase. The case was brought under RICO's private action/treble damages provision, 18 U.S.C. § 1964(c).[2]

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[2] 18 U.S.C. § 1964(c) states that "Any person injured in his business or property by reason of a violation of section 1962 [Prohibited Activities] of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee."

In *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 105 S.Ct. 3275, 3277-8 (1985), this Court noted that "[t]he initial dormancy of this provision and its greatly increased utilization are now familiar history" (footnote omitted), and acknowledged the growing concern about private plaintiffs' "misuse of civil RICO" and about "the consequences of an unbridled reading of the statute . . ." (*id.* at 3278). More specifically, this Court recognized that, "in its private civil version, RICO is evolving into something quite different from the original conception of its enactors," *i.e.*, "private civil actions are being brought almost solely against [respected businesses], rather than against the archetypal, intimidating mobster" (*id.* at 3287). Nevertheless, this Court reasoned that

> The fact that § 1964(c) is used against respected businesses allegedly engaged in a pattern of specifically identified criminal conduct is hardly a sufficient reason for assuming that the provision is being misconstrued. . . . [T]his defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress.

Id.

Amicus does not here challenge the precise holding in *Sedima*—namely, that RICO does not limit private actions to situations where a defendant has already been convicted of a predicate act or of a RICO violation, and that RICO does not require a plaintiff in a private action to establish a "racketeering injury" as opposed to an injury resulting from the predicate acts themselves (*id.* at 3278). However, *amicus* respectfully submits that nothing in the statute requires this Court to lie paralyzed in the face of its own admitted "doubts . . . about [the] increasing divergence" of private civil RICO's expansive current applications "from the original conception of its enactors" (*id.* at 3287). Surely this Court does not exceed its constitutional powers when it interprets a statute in such a manner as to give effect to Congress' intent in

enacting that statute. To the contrary, it is precisely then that the Court is fulfilling its most obvious constitutional role.

To begin, private civil RICO can be understood solely in terms of RICO as a whole. This Court has recognized that Congress' "declared purpose" in enacting RICO was "to seek the eradication of organized crime in the United States." *See United States v. Turkette*, 101 S.Ct. 2524, 2532 (1981) (quoting the statement of findings prefacing the statute of which RICO forms Title IX, *i.e.*, The Organized Crime Control Act of 1970, Pub.L. No. 91-452, 84 Stat. 923) and *Russello v. United States*, 104 S.Ct. 296, 302-303 (1983). The very title of the statute bespeaks its purpose, with its explicit reference to organized crime and to those who perpetrate it, *i.e.*, racketeers; similarly, the conduct prohibited by RICO is *racketeering* activity [*see* 18 U.S.C. § 1961 ("Definitions") and § 1962 ("Prohibited Activities")].

That Congress regarded RICO as a weapon against organized crime, *i.e.*, as a means of protecting legitimate businesses *from* organized crime, is also clear from RICO's legislative history. Indeed, Senator McClellan, the chief sponsor of the bill that became the Organized Crime Control Act of 1970, premised his arguments for its passage on the notorious activities of "La Cosa Nostra,"[3] and on the fact that, when "organized crime moves into a business, it usually brings to that venture all the techniques of violence and intimidation which it used in its illegal businesses."[4]

Private civil RICO has the same anti-organized crime purpose as the larger statute of which it forms a part. This remedy was not contained in the Senate RICO bill, but was added by the House Judiciary Committee at the

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[3] 115 Cong. Rec. 5872-5875 (1969).

[4] S. Rep. No. 617, 91st Cong., 1st Sess. 77; 116 Cong. Rec. 591 (1970) (remarks of Senator McClellan).

urging of Representative Steiger, who argued that "[T]hose who have been wronged by organized crime should at least be given access to a legal remedy. In addition, the availability of such a remedy would enhance the effectiveness of Title IX's prohibitions." [5] In so arguing, Representative Steiger confirmed that the private civil remedy was fully consistent with the purpose of RICO, which was "to prevent and reverse the corrupt infiltration of legitimate commercial activities by ruthless organized criminals." [6] Without a conference, the Senate adopted the bill as amended in the House.[7] Senator McClellan described the private civil remedy as "a major new tool in extirpating the baneful influence of organized crime in our economic life." [8] In the context of the rest of the bill, however, he viewed it and the other House amendments as "comparatively . . . minor changes." [9]

In light of the original understanding of private civil RICO as a means of attacking organized crime, the extent to which it has deviated from that understanding in practice is almost unimaginable. Although they were the intended beneficiaries of this provision, legitimate businessmen now find themselves its target.

In a report issued in 1985, the American Bar Association's Civil RICO Task Force noted that, of the 270 RICO cases handled by the federal district courts as of that time, only nine per cent involved "allegations of criminal activity of a type generally associated with

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[5] Organized Crime Control: Hearings Before Subcommittee No. 5 of the Committee on the Judiciary on S. 30 and Related Proposals Relating to the Control of Organized Crime in the United States, 91st Cong., 2d Sess. 520 (1970).

[6] *Id.* at 519.

[7] 116 Cong. Rec. 36296 (1970).

[8] *Id.* at 25190.

[9] *Id.* at 36293.

professional criminals." [10] It has been noted that "RICO claims now are added as a matter of course in virtually all cases challenging securities transactions or alleging some type of commercial fraud. RICO also crops up in landlord-tenant and real estate disputes, attorney-client conflicts, employment grievances, and even divorce battles." [11] In one of its most extreme—and plainly unintended—applications to date, RICO served as the basis of a lawsuit filed by a leftist organization seeking $24 million in "damages" from 29 defendants allegedly involved in a bizarre conspiracy linking events from the Bay of Pigs invasion of Cuba, the Vietnam War, arms sales in the Middle East and Central America, assassinations, bombings, and drug smuggling by the world's major cocaine cartels.[12] The suit, which had gone on for over two years, was ruled utterly baseless and was finally dismissed last month by a Florida district court, though its effects will long be felt by both the taxpayers (court costs have been estimated at $2 million) and—most severely—by those defendants now facing financial ruin from legal fees and damage to their reputations.[13]

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[10] Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking, and Business Law (1985) at 55-58.

[11] Lacovara, Philip A. and Aronow, Geoffrey F., "The Legal Shakedown of Legitimate Business People: The Runaway Provisions of Private Civil RICO," 21 *New England L. Rev.* 1 (1985-1986) (citations omitted).

[12] *Avirgan, et al. v. Hull, et al.* (S.D. Fla., Civ. Act. No. 86-1146-CIV-KING) (June, 1988).

[13] *See* "Christic's Fairy Tale Lawsuit Called 'Legal Terrorism,'" *The Washington Times*, June 28, 1988.

In his response to one of the countless motions in the case, John K. Singlaub, one of the defendants, noted some of the disturbing implications of the ever-expanding, unauthorized uses of RICO: "The Christics claim that the expansionist interpretation of RICO should be further exacerbated by giving [them] the power and informant privilege of a governmental prosecutorial officer. This case is a clear example of why it should not. Here is a case with no

While this case is, of course, one of the more egregious examples of the abuse of RICO, it shows the degree to which RICO can, when unmoored from Congressional intent, become a means of waging "legal terrorism."

In short, private civil RICO has been blatantly and unjustifiably wrenched from its anti-organized crime context, and has become an irresistible lure for bounty hunters seeking treble damages and attorney's fees for grievances which, if valid, would be fully redressable under other federal and state laws. Clearly, RICO's application is governed not—as it should be—by Congressional intent, but rather by the ingenuity of private plaintiffs who would like nothing better than for this Court to endorse their lucrative efforts to sever RICO from the reasons behind its enactment. No canon of statutory construction requires such an anomalous result.

B. Respondents Are Entitled To Have This Court Give Effect To Congress' Intent That Private Civil RICO Suits Be Limited To Organized Crime Defendants.

At no time have petitioners contended that respondents are in any way involved in organized crime, as that term is commonly understood. Organized criminal activity, of course, is not necessarily organized crime within the meaning of RICO. *See THE IMPACT: Organized Crime*

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supporting evidence, with no legitimacy of any kind, filed by irresponsible, publicity-hungry lawyers. These lawyers answer to no one, are appointed by no duly-elected official, and yet anoint themselves as vigilantes riding the range of defamation and blasting away irreverently at the characters of honorable, decent men . . . . They call themselves 'private attorneys general' [and tell the public that they have] '. . . been granted broad legal authority under tough federal anti-crime statutes to subpoena documents and witnesses to prove an enterprise of racketeering activity reaching back 25 years . . . .' . . . These self-appointed 'private attorneys general' are out of control." Response of John K. Singlaub and Brief in Support Thereof in Opposition to Petition for Writ of Mandamus, etc. (Nov. 20, 1987), at 12-14.

Today, Report to the President and the Attorney General by the President's Commission on Organized Crime (April, 1986), at 19 ("Definition of Organized Crime"). Rather,

> Organized crime is the collective result of the commitment, knowledge, and actions of three components: the criminal groups, each of which has at its core persons tied by racial, linguistic, ethnic or other bonds; the protectors, persons who protect the group's interests; and specialist support, persons who knowingly render services on an *ad hoc* basis to enhance the group's interests.

Id. at 25. One of the hallmarks of the criminal group is "violence and the threat of violence," which

> are used as means of control and protection against both members of the group who violate their commitment and those outside the group to protect it and maximize its power. Members are expected to commit, condone, or authorize violent acts.
>
> Within organized crime, murder is commonplace when the interests of the organization are threatened. Violence can be utilized as a direct method of control to silence a potential witness or as an indirect method of control to punish as a warning to others.

Id. at 28-29. In light of these definitions, it is not surprising that petitioners make no attempt to argue that respondents constitute the type of target at which Congress was taking aim when it enacted RICO. Rather, petitioners' claim against respondents rests on the hope that this Court will abdicate its responsibility to construe RICO in accordance with its legislative purpose, *i.e.*, as a weapon against organized crime, not against legitimate business.

In *Sedima, supra*, 105 S.Ct. at 3286, this Court observed that "RICO is to be read broadly," in view of Congress' "express admonition that RICO is to 'be liberally construed to effectuate its remedial purposes,' Pub.

L. 91-452, § 904(a), 84 Stat. 947." However, the lawgiver's admonition to construe a statute liberally is surely not an invitation to rewrite it, which is precisely what a court is doing when it construes a statute in a manner at variance with the reasons for its enactment. If Congress intended RICO to be read broadly, that is because Congress' purpose in enacting RICO was to mount "a *broad* assault on *organized crime*." *Russello v. United States, supra*, 104 S.Ct. at 302 (emphasis added). [*See also, id.*: "The legislative history clearly demonstrates that the RICO statute was intended to provide new weapons of *unprecedented scope* for an assault upon *organized crime*" (emphasis added).] Nothing in Congress' directive that RICO be construed liberally suggests that Congress ever intended to reach the non-organized crime situation at issue here.

This is especially so given that the conduct petitioners have accused respondents of committing, *i.e.*, bribery under state and common law with the intention of obtaining a rate increase from a public utilities commission (petitioners' brief, hereinafter "P.B.," at 3-5), is fully redressable under that law, while the evils to which RICO is addressed are those that might go unremedied otherwise.[14] As this Court recognized in *United States v. Turquette, supra*, 101 S.Ct. at 2530,

> [T]he very purpose of the Organized Crime Control Act of 1970 was to enable the Federal Government to address a large and seemingly neglected problem. The view was that existing law, state and federal, was not adequate to address the problem [of organized crime], which was of national dimensions.

[14] It should be noted that state law has already acted to redress the wrongs alleged by petitioners. The Minnesota Public Utilities Commission has reconsidered respondents' 1984 telephone service rate order (which order petitioners claim was "tainted" by respondents), vacated it, and substantially reduced respondents' rates. *See Matter of Minnesota Public Utilities Commission*, 417 N.W.2d 274 (Minn. App. 1987).

Indeed, in the statement of findings that prefaces the Act, *supra* (84 Stat. 923), Congress specifically attributed the continuing growth of organized crime to the fact that "the sanctions and remedies available to the Government are unnecessarily limited in scope and impact."

While it is true that bribery, which petitioners allege here, is listed as a "Racketeering Activity" in 18 U.S.C. § 1961(1)(A), the reason for its inclusion was Congress' finding that it was "typical of the crimes committed by persons involved in organized crime. . . ." *United States v. Turquette, supra*, 101 S.Ct. at 2532. But not every alleged act of bribery has organized-crime implications; thus, not every alleged act of bribery can properly serve as a basis for a suit under private civil RICO. Although Congress, in enacting RICO, knew that "it would alter somewhat the role of the Federal Government in the war against organized crime and that the alteration would entail prosecutions involving acts of racketeering that are also crimes under state law" (*id.* at 2530-2531), the fact remains that this "alteration" was made in the context of "the war against organized crime." Where, as here, there is absolutely no suggestion that respondents are in any way affiliated with organized crime, a private civil RICO suit is entirely unwarranted.

The validity of this proposition is in no way undermined by the fact some Members of Congress had objected to § 1964(c) on the grounds that it "provided too easy a weapon against 'innocent businessmen' . . . and would be prone to abuse. . . ." *Sedima, supra*, 105 S.Ct. at 3286 (citations omitted). As Justice Powell argued in his *Sedima* dissent, Congress' enactment of the provision in the face of those concerns hardly shows

> that Congress *intended* those consequences to occur, particularly where, as here, there is compelling evidence to the contrary. The legislative history reveals

> that Congress did not state explicitly that the statute would reach only members of the Mafia because it believed there were constitutional problems with establishing such a specific status offense. . . . Nonetheless, the legislative history makes clear that the statute was intended to be *applied* to organized crime, and an influential sponsor of the bill emphasized that any effect it had beyond such crime was meant to be only incidental . . . (remarks of Senator McClellan).

Id. at 3288-3289 (Powell, J., dissenting) (emphasis in original; citations omitted). Indeed, given the obvious anti-organized crime purpose of the provision itself and of RICO as a whole, the supporters of the provision might well have deemed their opponents' fears so completely baseless as to warrant no further refinement of the statutory language.

It remains only to note that the fact that Congress has not yet accepted this Court's invitation to address itself specifically to the issue of private civil RICO's use "almost solely" against respected businesses as opposed to "mobsters" (*id.* at 3287) is not a legitimate basis for concluding that Congress either originally intended or, in any event, now approves of this situation. *See Aaron v. Securities and Exchange Commission*, 100 S.Ct. 1945, 1954 n.11 (1980). *Amicus* has already demonstrated that Congress' intent in enacting the provision was precisely the contrary. Moreover, as this Court has itself observed, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *See Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 100 S.Ct. 2051, 2061 (1980).

As for treating the failure of subsequent Congresses to speak to this point as an indication of their acquiescence in the current state of affairs, suffice it to say that such an inference flies in the face of accepted canons of stautory construction, not to mention our system of checks and balances. Congress cannot constitutionally

legislate through inaction. *See Cleveland v. United States*, 67 S.Ct. 13, 17-18 (1946) (Rutledge, J., concurring, noting that "there are many reasons, other than to indicate approval of what the courts have done, why Congress may fail to take affirmative action to repudiate their misconstruction of its duly adopted laws. Among them may be the sheer pressure of other and more important business[,] . . . political considerations, . . . [a]nd . . . a strong and proper tendency to trust to the courts to correct their own errors") (citations omitted). Were Congress required to respond to judicial misapplications of its laws at the risk of being deemed to have accepted those misapplications, the role of the Executive in the legislative process could be bypassed, and the courts would in effect have paramount authority in the legislative realm.

In sum, there is no valid reason why this Court should fail to give effect to Congress' obvious intent that private civil RICO suits be limited to organized crime defendants.

C. A Proper Construction Of RICO's "Pattern Of Racketeering" Requirement Must Be Premised Upon RICO's Inapplicability To Non-Organized Crime Situations.

In their brief, petitioners discuss at length the various categories of "schemes," "episodes," and "transactions" that the lower federal courts have developed in their efforts to construe RICO's "pattern of racketeering" requirement. Not surprisingly, petitioners make no mention of the fact that these highly artificial and infinitely malleable constructions were crafted largely in response to the perceived problem—articulated or not—of unfairly branding legitimate businessmen as "racketeers" under a statute that was supposed to be a weapon against organized crime.

Until RICO and its private civil provision are confined to their anti-organized crime purposes, no amount

of judicial tinkering with the pattern requirement can be expected to rationalize this most irrational state of affairs. Indeed, it may even make things worse. *See* Statement of Deputy Assistant Attorney General John C. Keeney before the Subcommittee on Criminal Justice, Committee on the Judiciary, House of Representatives, Concerning RICO Legislation H.R. 2517 and H.R. 2943 (September 18, 1985) at 47 ("[T]he definition of 'pattern' should remain unaltered for criminal RICO. We have yet to see a redefinition which would not jeopardize our criminal enforcement efforts"). *See also* Letter from Assistant Attorney General John R. Bolton to Vice President George Bush (July 22, 1986) at 4 ("[C]hanges in the [pattern requirement] could also make it more difficult to obtain criminal convictions, while doing little to relieve federal courts of the burden of having to interpret and apply a general federal fraud remedy").

The threat that private civil RICO, as currently construed, poses to legitimate businesses cannot be overestimated. Precisely because this provision creates "private attorneys general" who, unlike their public counterparts, are under no obligation to exercise even a modicum of prosecutorial discretion before they file suit, this Court must be especially vigilant to insure that such cases are consistent with the anti-organized crime purposes of the statute. Such vigilance should lead this Court to reject petitioners' invitation simply to pick and choose among the lower courts' irreconcilable constructions of the pattern requirement, and should instead prompt an unequivocal restatement of Congress' unequivocal intent in enacting RICO.

CONCLUSION

For the foregoing reasons, the decision of the Eighth Circuit should be affirmed.

Respectfully submitted,

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